Hon. William J. O'Neil, Vice Chair
Attorney Regulation Advisory Committee
Supreme Court of Arizona
1501 W. Washington St.
Phoenix, AZ 85007

## IN THE SUPREME COURT

## STATE OF ARIZONA

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| In the Matter of: | Supreme Court No. R-19-0010 |
| **Petition to Amend Rule 37, Rules of the Supreme Court of Arizona** | **Comment of the Attorney Regulation Advisory Committee in Support of Proposed Rule Change with Modifications** |

Pursuant to Rule 28(e), Rules of the Supreme Court of Arizona, the Attorney

Regulation Advisory Committee ("ARC"), through its Vice Chair Hon. William J.

O'Neil, respectfully urges this Court to adopt the proposed amendment to Rule 37,

Rules of the Supreme Court of Arizona, with modifications as explained herein.[1]

As argued herein, the petition furthers the goals of protecting the public and

preparing bar exam applicants. It also presents privacy concerns for examinees, but

ARC concludes those concerns can reasonably be addressed with modifications to

the petitioners' proposed amendment.

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[1] ARC's Chair, Hon. Ann A. Scott Timmer, abstained from taking a position on the subject petition or this comment, so this comment is submitted by ARC's Vice Chair, Hon. William J. O'Neil.

The Court requires lawyers in the State of Arizona to be members of the State Bar of Arizona, the mission of which is "to serve and protect the public with respect to the provision of legal services and access to justice." Rule 31(a) (1) & (2), Rules of the Supreme Court. The petition represents that "more granular data, including applicants' scores on subparts … have great value for law schools seeking to improve their programs …" and, further, that "applicant-specific information would be far more valuable to the schools' ongoing efforts to prepare their students for the bar exam and give them the best opportunity to pass." (Petition at 2-3). The mission of protecting the public is enhanced if students are better educated by law schools better prepared to teach based on detailed, applicant-specific bar exam results. For this reason, ARC supports the goals of the petition.

ARC also recognized the importance of privacy to those who sit for the bar exam. The committee debated the best mechanism to protect the privacy of exam takers, including whether students should be allowed to opt in, meaning they must affirmatively consent to the release of their specific information, or opt out, meaning their information may be shared unless they express a contrary desire. ARC recommends that, if feasible, exam applicants be required to choose. For example, an applicant who applies online could be shown a screen that requires a yes or no answer to the question of whether the applicant's data may be shared.

1    Additionally, as drafted the petition would require the Committee on

2    Examinations to report detailed information to applicants' law schools, but also

3    require that the information be kept confidential. ARC recommends that law

4    schools be required to request the information. By requiring law schools to make

5    the request, the Court would be afforded an opportunity to emphasize the

6    importance of confidentiality or perhaps even gain the requesting school's consent

7    to this provision.

8            RESPECTFULLY SUBMITTED this _____ day of April, 2019.

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                        Hon. William J. O'Neil, Vice Chair
11                      Attorney Regulation Advisory Committee

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